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Beverly Smith

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ATTORNEYS FOR APPELLEE:

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**IN THE
COURT OF APPEALS OF INDIANA**

RICKY HILL,)
)
Appellant-Defendant,)
)
vs.) No. 49A02-0805-CR-461
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Patricia J. Gifford, Judge
Cause No. 49G04-0603-MR-50545

February 9, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Ricky Hill pleaded guilty to conspiracy to commit robbery¹ as a Class B felony and was sentenced to twenty years with six years suspended for an executed sentence of fourteen years. He appeals raising the following restated issue: whether his sentence was inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

FACTS AND PROCEDURAL HISTORY

On January 27, 2006, Hill was at an apartment complex in Indianapolis to buy drugs. The drug deal fell through, and Hill called Daniel Tolley to come pick him up. When Tolley arrived, Hill suggested robbing Tamara Hendricks of her prescription pills. Hendricks had been the person from whom Hill had previously tried to purchase drugs. While in Tolley's vehicle and discussing the robbery, Hill assured Tolley that it would not be too hard to accomplish the robbery. When Hendricks got into her boyfriend's car, Tolley exited his vehicle and approached Hendricks with a gun. Hill pulled his shirt over his face to conceal his identity and exited Tolley's vehicle to make sure that no one "jumped on" Tolley. *Tr.* at 24-25. Tolley attempted to take Hendricks's purse from her as that was where the pills were located. When Hendricks refused to let go of the purse, Tolley shot her. Hendricks later died of her injuries. After Hendricks was shot, Hill and Tolley fled the scene in Tolley's vehicle.

The State charged Hill with murder, felony murder, robbery as a Class A felony, and conspiracy to commit robbery as a Class B felony. Pursuant to a plea agreement, Hill pleaded guilty to conspiracy to commit robbery, and the State agreed to dismiss all of the

¹ See Ind. Code § 35-42-5-1.

other charges. Under the plea agreement, the parties also agreed to a sentencing cap of fourteen years executed. At sentencing, the trial court imposed a twenty-year sentence with six years suspended, two of which were to be served on probation, for a total executed sentence of fourteen years. Hill now appeals.

DISCUSSION AND DECISION

Appellate courts may revise a sentence after careful review of the trial court's decision if they conclude that the sentence is inappropriate based on the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). Even if the trial court followed the appropriate procedure in arriving at its sentence, the appellate court still maintains a constitutional power to revise a sentence it finds inappropriate. *Hope v. State*, 834 N.E.2d 713, 718 (Ind. Ct. App. 2005).

Hill argues that his sentence was inappropriate in light of the nature of the offense and his character. He specifically contends that based upon his character his sentence was inappropriate because he had a difficult childhood and had to assume responsibility for his younger siblings, he had employment available for him upon his release from incarceration, he assisted the State by testifying against his co-defendant, he was only nineteen at the time of the offense, and his criminal history was not substantial as it consisted mainly of juvenile offenses and no previous incarceration. Hill also asserts that the nature of the offense also supports the argument that his sentence was inappropriate because he had limited participation in the crime as he did not anticipate, plan, or commit the murder of Hendricks, and he is, therefore, not the worst offender.

As to the nature of the offense, the evidence showed that Hill set in motion the robbery and murder of Hendricks. Earlier that evening, he had attempted to purchase drugs from Hendricks, but was unsuccessful. When this drug deal fell through, he contacted Tolley to pick him up, and when Tolley arrived, Hill suggested that they rob Hendricks of her prescription pills. He assured Tolley that it would not be too hard to accomplish the robbery. When Hendricks entered her boyfriend's car, Tolley approached her with a gun, and Hill pulled his shirt over his face to disguise his identity and followed Tolley to make sure no one jumped him. Tolley attempted to take Hendricks's purse, and when she refused to give it to him, he shot and killed her.

As for Hill's character, the evidence presented at sentencing demonstrated that he had a criminal history that consisted of four juvenile adjudications and one adult felony conviction. His criminal history showed an escalating pattern as it began with a juvenile adjudication for truancy and progressed to adjudications for criminal mischief and auto theft and a felony theft conviction as an adult. Additionally, Hill was on probation at the time of the present offense and had five pending probation violations at the time of sentencing. We conclude that Hill's twenty-year sentence with six years suspended for a total executed sentence of fourteen years is not inappropriate in light of the nature of the offense and Hill's character.

Affirmed.

BAKER, C.J., and NAJAM, J., concur.